APPENDIX

The Constitution of the United States

Article III, §2, Clause 1:

> Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

Amendment V:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an

impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defense.

Amendment X:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

United States Code

Title 18:

§242. Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

§1254. **Courts of appeals, certiorari; appeal; certified questions.**

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

§2101. **Supreme Court; time for appeal or certiorari; docketing; stay.**

(c) Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days.

Title 42:

§1974. Every officer of election shall retain and preserve, for a period of twenty-two months from the date of any general, special, or primary election of which candidates for the office of President, Vice-President, presidential elector, Member of the Senate, Member of the House of Representatives, or Resident Commissioner for the Commonwealth of Puerto Rico are voted for, all records and papers which come into his possession relating to any application, registration, payment of poll tax, or other act requisite to voting in such election, except that, when required by law, such records and papers may be delivered to another officer of election and except that, if a State or the Commonwealth of Puerto Rico designates a custodian to retain and preserve these records and papers at a specified place, then such records and papers may be deposited with such custodian, and the duty to retain and preserve any record or paper so deposited shall devolve upon such custodian. Any officer of election or custodian who willfully fails to comply with this section shall be fined not more than $1,000 or imprisoned not more than one year, or both.

§1974a. Any person, whether or not an officer of election or custodian, who willfully steals, destroys, conceals, mutilates, or alters any record or paper required by section 1974 of this title to be retained and

preserved shall be fined not more than $1,000 or imprisoned not more than one year, or both.

§1974b. Any record or paper required by section 1974 of this title to be retained and preserved shall, upon demand in writing by the Attorney General or his representative directed to the person having custody, possession, or control of such record or paper, be made available for inspection, reproduction, and copying at the principal office of such custodian by the Attorney General or his representative. This demand shall contain a statement of the basis and the purpose therefor.

§1974c. Unless otherwise ordered by a court of the United States, neither the Attorney General nor any employee of the Department of Justice, nor any other representative of the Attorney General, shall disclose any record or paper produced pursuant to this subchapter, or any reproduction or copy, except to Congress and any committee thereof, governmental agencies, and in the presentation of any case or proceeding before any court or grand jury.

§1974d. The United States district court for the district in which a demand is made pursuant to section 1974b of this title, or in which a record or paper so demanded is located shall have jurisdiction by appropriate process to compel the production of such record or paper.

§1974e. As used in this subchapter, the term "officer of election" means any person who, under color of any Federal, State, Commonwealth, or local law, statute, ordinance, regulation, authority, custom, or usage, performs or is authorized to perform any function, duty, or task in connection with any application, registration, payment of poll tax, or other act requisite to voting in any general, special, or primary election at which votes are cast for candidates for the office of President, Vice President, presidential

elector, Member of the Senate, Member of the House of Representatives, or Resident Commissioner from the Commonwealth of Puerto Rico.

Mississippi Code of 1942, Annotated.

§2111. If any registrar appointed by law to register votes, shall intentionally refuse or neglect to register any voter entitled to registration, or register any voter not entitled to registration, he shall be punished, on conviction, by imprisonment in the penitentiary not less than one year nor more than three years.

Opinion of United States District Court for the Southern District of Mississippi.

* * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI

In re Preston P. Coleman, Circuit Clerk and Registrar of Lauderdale County, Mississippi.	Civil Action No. 1117 (Eastern Division)
In re L. F. Campbell, Circuit Clerk and Registrar of Madison County, Mississippi.	Civil Action No. 3288 (Jackson Division)
In re H. T. Ashford, Jr., Circuit Clerk and Registrar of Hinds County, Mississippi.	Civil Action No. 3308 (Jackson Division)

These three separate applications were filed in this Court against these registrars under Title III of the 1960 Civil Rights Act of the United States for the inspection of their registration and voting records in their respective counties in Mississippi. The substantial identity of questions involved entailed a consolidation of these cases for trial.

The Attorney General of the United States handed these county registrars a demand in writing for them to make available to him within fifteen days official records in their possession for inspection and copying in accordance with 42 U.S.C.A., §1974(b). The letter demand in part stated. "This demand is based upon information in the possession of the Attorney General tending to show that discriminations on the basis of race and color have been made with respect to registration and voting within your jurisdiction. The purpose of this demand is to examine the aforesaid records in order to ascertain whether or not

violations of Federal law in regard to registration and voting have occurred." The demand in each instance was refused, thereby precipitating these actions under 42 U.S.C.A., §1974(b).

The Attorney General thereupon filed his ex parte application for an order of the Court to require the production of such records for inspection and copying. The application stated that the demand was made for such records in accordance with §1974(b) and a copy of such demand was annexed thereto in each instance as Exhibit "A". The application cited the refusal of the registrar through his attorney to permit such inspection. It was averred that the registrar in his official capacity has the custody, possession and control of the records and papers requested, and more than fifteen days had elapsed after the presentation of such demand and that the registrar had refused to make said records and papers available to him.

The registrars answered the application as a plenary suit. The official capacity of the applicant was not denied. It was not denied that he had such official records in his possession and under his control. It was not denied that the Attorney General wanted to examine such records in the Federal field to see if any Federal laws were violated. The last sentence in §1974(b), supra, referring to the demand which was served on the registrar, provides: "This demand shall contain a statement of the basis and purpose therefor." The respondents say that the demand did not contain a statement of the basis but stated only the purpose therefor. Both sides declined to offer any evidence or testimony. The applicant requested the order without any proof and the respondent contended that without proof that he was entitled to a judgment because he had expressly denied that there was in fact any basis for such inspection within the statutory scheme.

The United States Court of Appeals for the Fifth Circuit has settled all questions in this case in *Robert F. Kennedy, Attorney General of the United States* v. *Theron C. Lynd, Registrar of Elections of Forrest County*, No. 19636, decided 7-11-62; *U. S.* v. *Theron C. Lynd*, 301 F.(2) 818; *Crum Dinkins* v. *The Attorney General of Alabama*, 285 F.(2) 430; *Kennedy* v. *Bruce*, 298 F.(2) 860. The respondents contend that each case cited is replete with dicta, in that the particular point in this case was not actually before the Court in either of those cases. That contention seems well founded, but whether said opinions are controlling or not does not solve the problem. In the absence of some more impelling and persuasive authority, to the contrary, those cases from this circuit are persuasive.

Significantly, the respondents do not claim that any record sought will incriminate them in any way; or subject them to any penalty, or that its contents when revealed will even embarrass them. On the contrary, the respondents say that such records were properly kept and that they never discriminated against anybody, and presumably the records will so show. It is not claimed that these official records are privileged, or exempt from discovery for any sound reason of public policy. It is not contended that an inspection of these records would be oppressive, or any unlawful invasion of any personal constitutional right of any respondent; or that it would work any hardship on either of them, but such inspection was refused because the Attorney General did not divulge the source of his information as to alleged discriminations and did not reveal whether or not his source was reliable and real, and not false.

The subject matter of this controversy is official records and not private property of any one. The

Congress has said that such records *shall* be made available to the Attorney General upon his demand therefor. He is the chief law enforcement officer of the nation. He desires to ascertain himself whether or not any violation of Federal law has occurred as reflected by these records in connection with the registration and voting of Negroes. He is officially concerned with the discharge of his duty and responsibility as a national officer in seeing whether or not such laws have been violated in the Federal field. He is presumed to be acting in good faith and in the proper pursuit of his official duties unless otherwise shown.

The right of inspection of official records exists at common-law subject to limitations not present here. There is no United States common law but the respondents are subject to the rules of the common-law in Mississippi, except as restricted by statute. The right of free examination of official records is the rule, and the inhibition of such privileges, when the purpose is speculative, or from idle curiosity, is the exception. Under the Federal rules, it is no longer a defense, that an interrogatory or an examination may be a fishing expedition. The form or style of the action is unimportant. The procedure devised by this scant enactment is summary in nature. It is not administrative but presents a justiciable controversy which affords a respondent adequate safeguard for his protection and proper defense. It is unimportant as to the identity of the applicant's informants, or whether or not he had any informants. There need be nothing wrong with the registrar's books to entitle a party in interest in good faith to make an inspection and take a copy thereof. The answer simply states no defense to the application, and the posture of the suit is the same as would be a case on a promissory note with a general issue plea interposed thereto. Such a plaintiff would be entitled to a judgment as a matter of law in spite of a general denial of

every affirmative averment in a complaint based on such note.

This application is merely a pure bill for discovery and seeking no other relief. No constitutional rights of the respondents are invaded or violated, and it is unnecessary to pass on the constitutionality of the act whether its constitutionality has been approved or not.

The applicant is entitled to an order for the inspection of such official records of these registrars, without any undue interference with their daily work and use of such records, from day to day, continuously, until completed during business hours and as quickly as reasonably possible. All pending motions will be overruled. Separate orders may be presented for entry in these cases on the same form used in the Lynd case. An order of consolidation of these cases may be likewise presented.

This September 8, A. D., 1962.

/s Harold Cox,

United States District Judge.

Opinion of the United States Court of Appeals for the Fifth Circuit.

IN THE

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 20102

Preston P. Coleman, Circuit Clerk and Registrar of Lauderdale County, Mississippi, Et Al., Appellants,

versus

Robert F. Kennedy, Attorney General of the United States, Appellee.

Appeals from the United States District Court for the Southern District of Mississippi.

(February 13, 1963)

Before Rives and Wisdom, Circuit Judges and Bootle, District Judge.

PER CURIAM: In an able opinion compelling production pursuant to the application of the Attorney General for inspection of the registration and voting records in the custody of the Registrars of Lauderdale, Madison, and Hinds Counties, Mississippi, the district court correctly observed:

> "The United States Court of Appeals for the Fifth Circuit has settled all questions in this case in Kennedy, Attorney General of the United States v. Lynd, Registrar of Elections of Forrest County, 5 Cir., 306 F.2d 222; U. S. v. Lynd, 5 Cir., 301 F.2d 818; Dinkins v. Attorney General of U. S., 5 Cir., 285 F.2d 430; Kennedy v. Bruce, 5 Cir., 298 F.2d 860."

In re Coleman, S.D. Miss., 1962, 208 F. Supp. 199, 200.

Our construction in *Kennedy* v. *Lynd*, *supra*, 306 F.2d at 226, of the requirement of 42 U.S.C.A. §1974(b) that the demand for voting records "contains a statement of the basis and the purpose therefor" is supported by legislative history. Without collecting or citing more of that history, we quote from Senator Keating, one of the principal spokesmen for the bill in the Senate (106 Cong. Rec. 7767):

> "The language added by the House Judiciary Committee in section 303 that the Attorney General's demand 'contain a statement of the basis and the purpose therefor' means only that the Attorney General identify in a general way the reasons for his demand. Clearly a sufficient statement would be the assertion that the demand was made for the purpose of investigating possible violations of a Federal statute. No showing even of a prima facie case of a violation of Federal law need be made. Mr. President, I believe that a majority of the Senate shares my understanding of the meaning of these provisions, but I thought it was important to make the record on this point abundantly clear."

The present appeals are totally without merit, and the judgments are

AFFIRMED.

Judgment of the Court of Appeals

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

October Term, 1963

No. 20102

D. C. Docket Nos. 1117, 3286 and 3308 Civil Action
Preston P. Coleman, Circuit Clerk and Registrar of Lauderdale County, Mississippi, et al.,
Appellants.

versus

Robert F. Kennedy, Attorney General of the United States,
Appellee.

Appeals from the United States District Court for the Southern District of Mississippi.

Before Rives and Wisdom, Circuit Judges, and Bootle, District Judge.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Mississippi, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgments of the said District Court in this cause be, and the same are hereby, affirmed.

February 13, 1963

Issued as Mandate:

Denial of Petition for Rehearing.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 20102

Preston P. Coleman, Circuit Clerk and Registrar of Lauderdale County, Mississippi, et al.,
Appellants.

versus

Robert F. Kennedy, Attorney General of the United States,
Appellee.

Appeals from the United States District Court for the Southern District of Mississippi.

(March 15, 1963)

ON PETITION FOR REHEARING

Before Rives and Wisdom, Circuit Judges, and Bootle, District Judge.

Per Curiam:

The petition for rehearing in the above-styled and numbered cause is hereby

DENIED.